

11-2005

Federal Mandatory Minimum Drug Sentences: Weapon in the War on Drugs or War on Blacks

Crystal S. Byrd

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The Edwin P. McCabe Honors Program

Senior Thesis

“Federal Mandatory Minimum Drug Sentences: Weapon in the War on Drugs or War on Blacks”

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November 2005

Langston University
Langston, Oklahoma

**FEDERAL MANDATORY MINIMUM DRUG SENTENCES:
WEAPON IN THE WAR ON DRUGS OR WAR ON BLACKS**

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ACKNOWLEDGEMENTS

Special thanks go to my mother and father for their encouragement and support. I am also grateful to my sister, Joycelynn and her family, for giving me the tools I needed to complete this project. I could not have done this without you. My thanks also go Mario for the trips to the library and for not allowing me to give up. I would also like to thank Mrs. Miller for the things I learned in class and during the internship. They helped me a great deal during the writing process. Finally, I would like to express my sincere gratitude to Dr. Clark and Mrs. Birdine of the E.P. McCabe Honors Program. Thank you for giving me this opportunity and for being so patient.

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I.

Federal Mandatory Minimum Drug Sentences:

Weapon in the War on Drugs or War on Blacks

This study will attempt to determine the direct and indirect consequences of Federal mandatory minimum drug sentences and drug policy to African Americans. It will examine statistics on drug use, arrest, convictions, and incarceration of African Americans. These statistics will be gathered from several government agencies and will be used to determine if American drug policy discriminates against African Americans. The purpose of this study is to inform and educate African Americans about Federal mandatory minimum drug sentences and the impact they are having on Black communities and to provide links to resources that can be used to promote drug policy reform.

Background

In 1986, the United States Congress responded to what was called the crack epidemic by enacting mandatory minimum sentences for powder and crack cocaine offenses. Crack is cheaper and is believed to be more dangerous and potent than the powder form of cocaine. Because of these reasons Congress distinguished between the two forms and made the penalties for crack harsher than those for powder cocaine.

Cocaine is derived from the coca plant, which grows wild in parts of South America and is cultivated in others. The leaves of the plant are used to make a paste. The paste is heated with hydrochloric acid to produce cocaine hydrochloride, the white powder. This is the most common form of cocaine. Crack cocaine is made by adding ammonia or sodium bicarbonate and water to pure cocaine, drying the mixture, and crumbling the residue into small rocks. Powder cocaine

can range in purity from zero to 90 percent. Crack is usually somewhere between 25 to 40 percent pure (Wagner, 2003).

Both powder cocaine and crack cocaine are stimulants that give the user intense feelings of pleasure. Powder cocaine is usually inhaled, and takes several minutes for the high to be felt. It can last anywhere from 20 to 30 minutes. Crack is usually smoked and the high is felt almost immediately. The intense high only lasts from five to ten minutes. Crack is considered to be the more addictive of the two forms because its high is so powerful and short-lived. As soon as the high is gone users want more. They continue to use attempting to match their initial high, which they will never be able to achieve again. This makes crack highly addictive (Barter, 2002).

Drug laws created to combat the impact of cocaine on society have had a direct effect on the Federal prison system. From 1985 to 1995, over 80% of the Federal prison population increase was due to drug convictions (Drug War Facts, 2005). As the number of inmates began to rise the number of incarcerated African Americans also began to rise. Despite the fact that African Americans make up a small portion of this country's population they make up a large portion of incarcerated offenders. This can be greatly attributed to the enactment of Federal mandatory minimum drug laws.

Problem Statement

As a result of mandatory minimum drug sentences and current drug policy African Americans are disproportionately represented in the American criminal justice system. They are also more likely to be incarcerated for longer periods of time. Some Americans do not see this as discrimination against African Americans; while others are working to get the laws revised in order to decrease what they believe to be discrimination. This study will explore the claims that American drug policy is racially discriminatory.

Purpose of the Study

The purpose of this study is to use statistics from various government agencies to prove or disprove discrimination of African Americans in the criminal justice system. It will also explore the indirect problems African Americans face because of American drug policy. This study will provide a wide range of information that will allow individuals to form knowledgeable opinions on the usefulness of current American drug policy and the impact it has on African Americans.

Importance of Study

This study is important because it will lead to a better understanding of the impact of mandatory minimum drug sentences and other American drug policies on African Americans. African Americans need to be more aware of these impacts and made to realize that the incarcerated offenders are not the only affected parties. African American families and the African American community as a whole also suffer. This study includes information to aid in the awareness and understanding of drug policy and how it can be helpful and harmful to African Americans.

Scope and Limitations of Study

This study will take into account the many arguments in favor of mandatory minimum drug sentences given by various American leaders. It will also take into account the arguments opposing mandatory minimums. It will provide reasons why changing current drug policy may be difficult, but it will also provide ways in which drug policy can be reformed so that it can be more widely accepted.

This study is limited to the discussion of Federal mandatory minimum drug sentences and current Federal drug policy. It is based on the previous research of several government agencies

because of limited time and resources. Finding an acceptable sample population that would produce meaningful results would be very difficult at this point. There are many factors such as race, gender, age, offense type, individual involvement in the offense, and the amount of drug involved that needs to be considered when designing research methodology. These factors and others are important in producing relevant and meaningful information that will provide an accurate picture of the impacts mandatory minimums and drug policy have on African Americans.

Chapters Outline

This study begins with a brief overview of the history of American anti-drug legislation. This is followed by a chapter, which covers statistical information concerning drug use, arrest, conviction, and incarceration of African Americans. The next chapter examines the arguments of supporters of the current drug policy and mandatory minimums. The following chapter is a discussion of the indirect consequences of current drug policy to African Americans. The final chapter provides a brief summary of the information contained in this study, and concludes with recommendations on how to decrease the inequalities caused by mandatory minimum drug sentences. This is followed by recommendations for how African American citizens can become involved and work toward a change in Federal drug policy.

II.

History of American Anti-Drug Legislation

Throughout the history of the United States, there have been many efforts to control drugs through legislation. This chapter provides a brief overview of some of the major pieces of drug legislation that have been enacted over the years. It begins with the first American anti-drug law followed by a discussion of the Harrison Narcotics Act. The next section covers the Boggs Act and the Comprehensive Drug Abuse and Prevention Act of 1970. Next is the 1984 Sentencing Reform Act, followed by the Anti-Drug Abuse Acts of 1986 and 1988. The last two pieces of Federal anti-drug legislation discussed in this chapter are the Crime Control Act of 1990 and the Violent Crime Control and Law Enforcement Act of 1994.

First American Anti-Drug Law

In the 1972, Consumer's Union Report on Licit and Illicit Drugs there is a section that discusses the first American anti-drug law that was enacted in 1875 in San Francisco, California. It outlawed the smoking of opium in opium dens. Although other groups used opium in other forms opium smoking in America was mostly associated with Chinese immigrants. Chinese opium smoking varied little from the recreational use of other drugs by other ethnic groups, yet it was the only drug outlawed at the time. Opium addiction did exist, but it did not seem to be a major problem. The majority of opium smokers went to opium dens on the weekend, smoked, and returned to their jobs on Monday. Their weekend activity seemed to have no interference with their performance at work. Racism seemed to be the fueling source behind the enforcement of the law that unfairly targeted Chinese immigrants and was rarely applied to users of other ethnicities (History of Drug Laws, n.d; Schmallegger, 2003).

The Harrison Narcotics Act of 1914

The United States Government made its first attempt to control drugs in this country with the Harrison Narcotics Act, the first major piece of federal anti-drug legislation. The act made it mandatory that anyone dealing in opium, morphine, heroin, cocaine, and certain derivatives of these drugs, register with the Federal government and pay a yearly tax of \$1.00. Doctors, pharmacists, and members of the medical profession were the only people allowed to register. The penalty for non-registered drug trafficking was a fine of up to \$2000 and up to five years in prison (Schmallegger, 2003).

The Boggs Act

In 1951, the Boggs Act was passed. Named after Democratic Senator Hale Boggs of Louisiana, the act imposed the first Federal mandatory minimums for narcotics violations. A first offense could receive from two to five years in prison, second offense five to ten years, and third offense ten to twenty years. After the first conviction, there was no possibility of probation or parole. In 1956, the Narcotic Control Act of 1956 made the penalties for drug trafficking and possession even harsher. A first time offense could carry a five to twenty year sentence and selling of a narcotic to a minor under the age of 18 by an adult became a capital offense punishable by death (Schmallegger, 2003; History of Mandatory Minimums, 2002).

Comprehensive Drug Abuse Prevention and Control Act of 1970

The Comprehensive Drug Abuse Prevention and Control Act of 1970 formed the base for current federal drug law enforcement. The act combined existing drug laws and regulations. It also added a new set of penalties for drug violations and it increased regulations of medicinal drugs. Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, the Controlled Substances Act, established schedules classifying psychoactive drugs according to

their degree of psychoactivity. All federally controlled substances are placed into one of five schedules. Substances are placed based on their medicinal value, harmfulness, and potential for abuse or addiction (Drug Enforcement Agency, 2005).

Table 1.1

Drug Schedules of the Controlled Substances Act

Schedule I

- The drug or other substance has a high potential for abuse.
- The drug or other substance has no currently accepted medical use in treatment in the United States.
- There is a lack of accepted safety for use of the drug or other substance under medical supervision.
- Examples of Schedule I substances include heroin, lysergic acid diethylamide (LSD), marijuana, and methaqualone.

Schedule II

- The drug or other substance has a high potential for abuse.
- The drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions.
- Abuse of the drug or other substance may lead to severe psychological or physical dependence.
- Examples of Schedule II substances include morphine, phencyclidine (PCP), cocaine, methadone, and methamphetamine.

Schedule III

- The drug or other substance has less potential for abuse than the drugs or other substances in schedules I and II.
- The drug or other substance has a currently accepted medical use in treatment in the United States.
- Abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence.
- Anabolic steroids, codeine and hydrocodone with aspirin or Tylenol®, and some barbiturates are examples of Schedule III substances.

Schedule IV

- The drug or other substance has a low potential for abuse relative to the drugs or other substances in Schedule III.
- The drug or other substance has a currently accepted medical use in treatment in the United States.
- Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule III.
- Examples of drugs included in schedule IV are Darvon®, Talwin®, Equanil®, Valium®, and Xanax®.

Schedule V

- The drug or other substance has a low potential for abuse relative to the drugs or other substances in Schedule IV.
- The drug or other substance has a currently accepted medical use in treatment in the United States.
- Abuse of the drug or other substances may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule IV.
- Cough medicines with codeine are examples of Schedule V drugs.

Source: Drug Enforcement Agency, Drugs of Abuse: 2005

Sentencing Reform Act of 1984

The Sentencing Reform Act of 1984 is part of Title II of the Comprehensive Crime Control Act. The act established the U.S. Sentencing Commission, a nine-member panel made up of presidential appointees, three of them Federal judges (Schmallegger, 2003). The purpose of the commission was to create structured sentencing guidelines that would reduce sentencing disparities by promoting uniformity and proportionality in sentencing. The commission created guidelines by which offenders would be sentenced based on their criminal background and the seriousness of the crime. The offender's role in the crime and any mitigating or aggravating circumstances would also be taken into consideration (Lee, 1995).

The Sentencing Reform Act of 1984 also established Mandatory minimum sentences for certain Federal crimes. This included drug offenses. Sentencing would be based on several factors, the type and amount of drug involved, criminal background, and aggravating circumstances. The Sentencing Reform Act also abolished Federal parole boards. The U.S. Parole Commission could no longer grant early release to Federal offenders. Offenders would be forced to serve the majority of their court-imposed sentence. As a result of Federal mandatory minimum sentences and sentencing guidelines Federal drug offenders are serving longer prison sentences (Lee, 1995).

The Anti-Drug Abuse Act of 1986

The 1986 Anti-Drug Abuse Act strengthened penalties even more for drug offenses. It created two tiers of mandatory sentences for first time drug traffickers, five and ten year minimum sentences. The sentence would be based on the type and quantity of the drug involved. The law also made a distinction between cocaine base and its other forms such as crack cocaine. A conviction for possession of five grams of crack would receive a five-year mandatory

minimum prison sentence. This was the same amount of time mandated for a conviction of possession of five hundred grams of powder cocaine. Congress considered several other crack/cocaine ratios before choosing the current ratio of 100-to-1. The Narcotics Penalties and Enforcement Act of 1986 contained a 50-to-1 ratio. The Mandatory Crack and Other Drug Penalties Act, Drug Free Federal Workplace Act of 1986, Drug Enforcement Act of 1986, and the Zero-Tolerance Act all contained 20-to-1 ratios for crack and cocaine (United States Sentencing Commission, n.d.).

Because of the belief that crack was a greater danger than powder cocaine Congress chose to adopt the much higher ratio of 100-to-1. The bill was able to pass through Congress quickly without much opposition because of the death of a young sports star. In June of 1986, NCAA basketball star and Boston Celtic's draftee Len Bias died of a cocaine overdose. Increased media coverage and public concern about cocaine led Congress to expedite the legislative process and get the bill passed quickly (United States Sentencing Commission, n.d; Barter, 2002).

The Anti-Drug Abuse Act of 1988

In 1988, President Ronald Reagan created a new Cabinet-level position by naming a "drug czar." This person would be the head of the new Office of National Drug Control Policy and would organize Federal drug fighting efforts. Former secretary of education, William Bennett was appointed to this position. At the same time the Anti-Drug Abuse Act of 1988 was also passed. The goal of this act was to produce a drug free America by 1995. The law increased penalties for recreational drug use. Recreational users convicted of possession could face up to \$10,000 in civil penalties. It also made it possible for offenders convicted of drug related

murders to face the death penalty and it also denied convicted drug offenders the benefits of receiving federal loans, contracts, and licenses (Schmallager, 2003).

Federal Anti-Drug Legislation 1990 to 1994

During the 1990s, the Federal government continued to issue more anti-drug legislation. The Crime Control Act of 1990 contained a number of provisions to help in the war on drugs. They are listed below.

- doubled the appropriations authorized for federal drug-law enforcement grants to states and local communities
- enhanced drug-control and education programs aimed at the nation's schools
- expanded specific drug-enforcement assistance to rural states;
- expanded regulation of precursor chemicals used in the manufacture of illegal drugs
- sanctioned anabolic steroids under the Controlled Substances Act;
- included provisions to enhance control over international money laundering
- created "drug-free school zones" by enhancing penalties for drug offenses occurring in close proximity to schools
- enhanced the ability of federal agents to seize property used in drug transactions or purchased with drug proceeds

At the time of its passage the Violent Crime Control and Law Enforcement Act of 1994 was the largest crime bill in the history of the United States. With respect to drugs, this law made large-scale drug trafficking punishable by death. It provided stiffer penalties for drug crimes committed by gangs. Maximum penalties for using children to deal drugs near drug-free zones were tripled. It gave a third conviction for drug trafficking or violent felonies a mandatory life sentence. The Violent Crime Control and Law Enforcement Act also contained grant

programs, which allocated money for anti-crime and drug efforts, and drug treatment programs. \$383 million was set aside for drug treatment programs for state and federal prisoners. It also allocated money for drug court programs, which were created to treat non-violent offenders with substance abuse problems (United States Department of Justice, 1994; Schmallager, 2003).

Summary

This chapter covers nine pieces of American anti-drug legislation, beginning with the 1875, San Francisco law that prohibited opium smoking. The second piece of legislation covered was the Harrison Narcotics Act, the first major piece of Federal drug legislation. Third was the Boggs Act. This act imposed the first mandatory minimums for narcotics violations. The fourth piece of legislation discussed was the Comprehensive Drug Abuse Prevention and Control Act of 1970. This act created the drug scheduling classifications that are used today in Federal drug law enforcement. The fifth act was the Sentencing Reform Act of 1984. It created the nine-member panel that was given the task of providing uniformity and proportionality in the sentencing of certain offenses. Next was the Anti-Drug Abuse Act of 1986, which created stiffer penalties for drug violations and differentiated between crack and powder cocaine by providing harsher sentences for crack than powder cocaine. The seventh piece of legislation covered was the Anti-Drug Abuse Act of 1988. It strengthened penalties against recreational drug users. The final two pieces of legislation discussed were the Crime Control Act of 1990 and the Violent Crime Control and Law Enforcement Act of 1994. These acts provided help for state and local law agencies in fighting drug crimes and preventing and treating drug abuse.

III.

Statistical Background: Drug Use, Arrests, Convictions, and Incarceration

It is estimated that African Americans make up about 12 percent of the United States population. Although making up only a small portion of the nation's population African Americans account for a large proportion of incarcerated adults (United States Census Bureau, 2000). The Federal and state prison system as a whole has seen an incredible increase in the number of incarcerated offenders. It is believed that Federal mandatory minimum drug sentences are one of the reasons for the prison population boom. This chapter will consist of information gathered from government agencies. The information will focus on the arrest, conviction, and incarceration rates of Black and White drug offenders. The goal of this chapter is to reveal whether information provided to the public by criminal justice and corrections agencies are consistent with the allegations of sentencing and incarceration disparities for African Americans.

Illicit Drug Use Among African Americans and Whites

The Office of National Drug Control Policy has a web page, which contains facts and figures about minorities and drugs. One of the sections reports on the extent and use of drugs among minorities. Results from the 2003 National Survey on Drug Use and Health conducted by the National Substance Abuse and Mental Health Services Administration showed that Whites made up 49.2% of lifetime illicit drug users in this country, while African Americans accounted for 44.6% of lifetime illicit drug users (Office of National Drug Control Policy, 2004).

In 2003, the National Institute on Drug Abuse published a report entitled *Drug Use Among Racial/Ethnic Minorities*. It was based on the results from the institute's National Household Survey on Drug Abuse. According to the survey estimates of recent illegal drug use

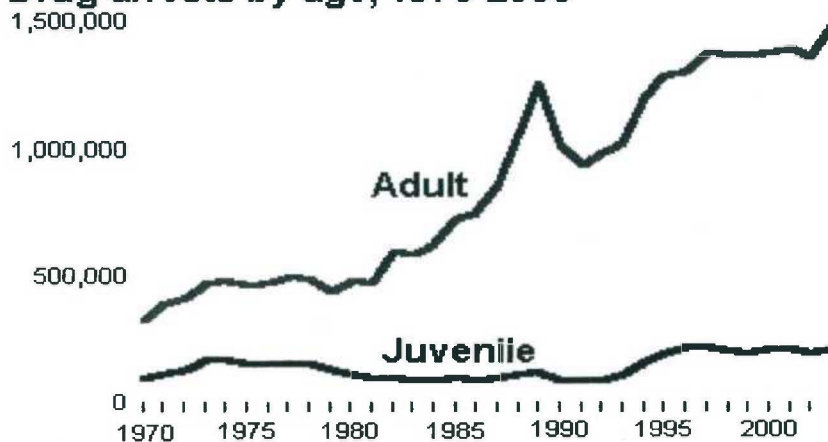
by African Americans was almost equal to that of Whites. It was also found that African American high school seniors have had consistently lower estimates of alcohol, tobacco, and other drug use compared to White high school seniors. (National Institute on Drug Abuse, 2003).

The results from these surveys raise several questions. If African American's involvement with drugs is no greater than that of Whites, why are the numbers of Blacks and Whites in the criminal justice system as result of drug offenses not more equally proportioned? One of the reasons given to explain lower estimates of drug use among African Americans than Whites is that African Americans might have been underrepresented because of unwillingness to participate or give honest answers on surveys measuring drug use. The surveys are self-reporting so it is up to the individual to report their drug use and the extent to which they use honestly. It is wrong to assume that this particular group of Americans was being dishonest. It is also wrong to assume that other groups were not uncooperative or untruthful on the surveys. Is it not possible that other groups such as Whites, Hispanics, Asians, and Native Americans were also unwilling to participate or gave deceitful answers?

Drug Arrests and Convictions

Harsher drug laws and the large amounts of money being devoted to the enforcement of these laws make it no surprise that the number of drug arrests have been on the rise. The Bureau of Justice Statistics created several charts that demonstrate how dramatic the increase in the number of drug arrests has been. Figure 3.1 on the next page shows how adult drug arrests increased greatly during the 1980s. They decreased during the early 1990s and then gradually began to climb again. Between the years of 2002 and 2003, there was another increase of arrests for drug abuse violations.

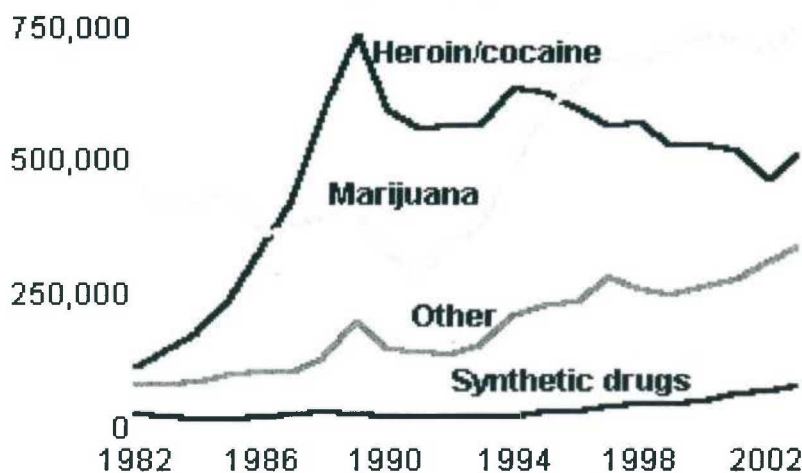
Figure 3.1
Drug arrests by age, 1970-2003



Source: Bureau of Justice Statistics, Key Crime Facts at a Glance

Below is figure 3.2, which distinguishes between the types of drugs involved. It demonstrates that the number of cocaine and heroin arrests dramatically increased during the 1980s and then started to decrease during the 1990s. During these years, the majority of drug arrests involved the use of those two drugs until marijuana took the top spot around 1995. Cocaine and heroin arrests continued to decrease until 2002. Between 2002 and 2003 an increase in arrests for both cocaine and heroin occurred.

Figure 3.2
Number of arrests, by drug type, 1982-2003



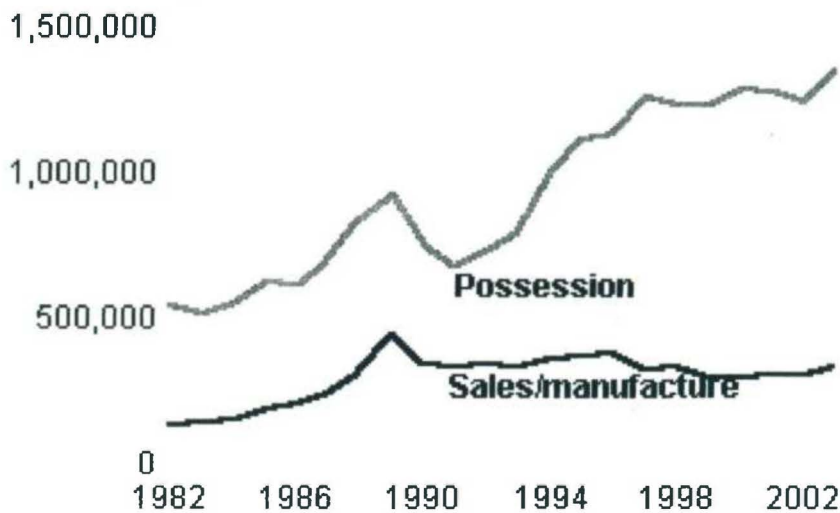
Source: Bureau of Justice Statistics, Key Crime Facts at a Glance

In 1999, 38,288 suspects were sent to U.S. attorneys by Federal law enforcement agencies, 28% for powder cocaine and 15% for crack cocaine. Together powder and crack cocaine suspects led all other drug suspects sent to U.S. attorneys. Ninety percent of drug defendants charged were actually convicted. Ninety five percent of those convicted pleaded guilty to at least one of the offenses they were charged with. Ninety one percent of charged defendants were convicted of drug trafficking. Only 3% were convicted of simple possession (Scalia, 2001).

It is interesting that there is such a huge difference in the number of defendants charged with drug trafficking and those charged with possession. Figure 3.3 below shows that arrests for possession clearly outnumber those for other drug violations including trafficking. This seems to be a contradiction, but there may be an explanation. Prosecutors may choose not to prosecute offenders arrested for possession as often as offenders arrested for drug trafficking, because it is not a serious offense and it involves smaller amounts of drugs than trafficking.

Figure 3.3

Number of arrests, by type of drug law violations, 1982-2003



Source: Bureau of Justice Statistics, Key Crime Facts at a Glance

In the 2002 Sourcebook of Federal Sentencing Statistics published by the United States Sentencing Commission, it was reported that 25,609 Federal defendants were charged with drug violations. Whites made up 26.9% of the defendants while Blacks accounted for 28.2%. The Bureau of Justice Statistics reported that in 2000 Blacks made up 53% of convicted felony drug offenders in state courts Whites made up 46%. The Bureau of Justice Statistics also reported that in 2001, Blacks accounted for the majority of drug offenders incarcerated in state prisons. Of the 246,100 incarcerated drug offenders, 139,700 were Black while 57,300 were White (Office of National Drug Control Policy, 2004).

Incarcerations in the Federal Bureau of Prisons

The Federal Bureau of Prisons was created in 1930. At that the end of that year there were 14 institutions for over 13,000 inmates. Today there are over 105 Federal institutions that serve over 180,000 offenders, 85% of which are incarcerated. During the 1980s, there was a dramatic increase in the number of Federal inmates. This can be attributed to the Sentencing Reform Act of 1984, the Anti-Drug Abuse Act of 1986 and 1988, and the Crime Control Act of 1990. Between the years of 1980 to 1989, the inmate population increased from a little over 24,000 to almost 58,000. The inmate population continued to grow during the 1990s. In 1999, the count had reached about 136,000. As of September 30, 2003, the Federal Bureau of Prisons reported that there were 142,799 Federal inmates. 89.2% of them had been sentenced, the rest had not. 93.1% of the inmates were male, 6.9% were female. Blacks accounted for 40.4% of Federal inmates. Whites accounted for 56.4%. The majority of Bureau of Prison offenders, 55%, had some type of drug offense (Federal Bureau of Prisons, 2003, 2004).

Query of the Federal Justice Statistics Database, 2002

In this section are the results of a query I conducted of the Federal Justice Statistics Database for the year 2002. This was the most recent year for which information was available. The query included three different datasets of offenders, and the variables used were offense type, race, and gender. The first dataset included offenders entering Federal prison during the fiscal year 2002. There were a total of 10,266 Blacks with drug offenses, 9,186 males and 1,080 females entering Federal prison. The total number of White drug offenders entering Federal prison was 18,620; 16,031 of them were male and 2,589 were female (see Table 3.1). The second dataset included the population of offenders in Federal prison at fiscal year end 2002. The total number of Black drug offenders was 37,569; 35,136 were male and 2,433 were female. The total number of White drug offenders was 49,456; 39,371 were male and 4,085 were female (see Table 3.2). The third dataset queried included offenders exiting Federal prison during the fiscal year 2002. The total number of Blacks with drug offenses exiting Federal prison was 8,613; 7,611 were male and 1,002 were female. The total number of exiting Whites was 16,380; 14,004 were male and 2,367 were female (see Table 3.3).

Table 3.1**Dataset: Offenders entering Federal prison, fiscal year 2002 with drug offenses**

	Male	Female	Total
Black	9,186	1,080	10,266
White	16,031	2,589	18,620

Source: Federal Justice Statistics Resource Center

Table 3.2**Dataset: Population of offenders in Federal prison at fiscal year end 2002 with drug offenses**

	Male	Female	Total
Black	35,136	2,433	37,569
White	39,371	4,085	43,456

Source: Federal Justice Statistics Resource Center

Table 3.3**Dataset: Offenders exiting Federal prison, fiscal year 2002 with drug offenses**

	Male	Female	Total
Black	7,611	1,002	8,613
White	14,004	2,367	16,380

Source: Federal Justice Statistics Resource Center

From this information, racial disparities in drug sentencing and incarcerations are not obvious, but when the size of the Black population is taken into consideration the information takes on a new meaning. For instance, the Bureau of Justice Statistics examined the percent of adults under correctional supervision by race between 1986 and 1997. In 1986, 5.7% of Blacks were under correctional supervision compared to 1.4% of Whites. By 1997, the percent of Blacks under correctional supervision had risen to 9% compared to 2% of Whites (Bureau of Justice Statistics, 2002). In addition, the 2000 census of Federal and state correctional facilities reported that Blacks outnumbered Whites in Federal, state, and private facilities. In Federal facilities there were 44,800 Blacks and 29,800 Whites. In state facilities there were 506,408

Blacks and 395,637 Whites. In private facilities there were 36,066 Blacks and 27,905 Whites (Stephan & Karberg, 2000). (see Table 3.4)

Table 3.4

Number of Inmates in State and Federal Correctional Facilities, by race, June 30, 2000

	Total number of offenders	White	Percentage	Black	Percentage
Total	1,305,253	453,300	34.7	587,300	44.9
Federal	110,974	29,800	26.8	44,800	40.3
State	1,101,202	395,637	35.9	506,408	45.9
Private	93,077	27,905	29.9	36,066	38.7

Source: Census of State and Federal Correctional Facilities, 2000

*Federal total was estimated based on Federal Justice Statistics data for September 30, 2000, and rounded to the nearest 100.

Midyear 2004, Incarceration Rates

As of June 30, 2004, there were 2.1 million incarcerated offenders. Of those 576,600 were Black males between the ages of 20 and 39. 4,419 Black men per 100,000 Black males in the United States were in prison or jail. This is six times the amount of White males in prison or jail; 717 per 100,000 White males in the United States. It was estimate that 13% of Black males in their late 20s were in prison or jail at midyear 2004. For Black males between the ages of 25 and 39, 12.6% were in prison or jail. This is compared to only 1.7% of White males in the same age group. The percentage of Black males between the ages of 45 and 54 was also higher than the highest percentage for Whites, 4.5% compared to 1.7% of White males between the ages of 30 and 34.

At midyear 2004 Black females also faced higher incarceration rates than White females. For every 100,000 Black females in the United States 359 were in prison or jail. For every 100,000 White females in the United States 81 were in prison or jail. This disproportion remained constant across all age groups. Black females between the ages of 35 and 39 were incarcerated at a rate of 993 per 100,000 Black females in the U.S., while White females in the same age group were incarcerated at a rate of 238 per 100,000 White females. (Harrison & Beck, 2004).

This chapter contains information gathered from several different government agencies. The agencies collect similar data yet there are differences in statistics reported by each of them. Because each agency has its own criteria for tabulating and reporting information, it is impossible to directly compare reported statistics. Agencies use different criteria based on their specific needs and missions. Various agencies tally defendants and cases processed in different ways, define defendants processed differently, have different classifications for offenses committed, and classify dispositions and sentences imposed differently. In 1982, the Bureau of Justice Statistics implemented the Federal Justice Statistics Program to provide uniform case processing statistics across different stages of the criminal justice system and to track individual defendants through each stage of the process. The majority of information in this chapter comes from the Bureau of Justice Statistics because it provides reconciled data (Bureau of Justice Statistics, 1998).

Summary

This chapter offers statistical background for this study. The information provided shows that African Americans are disproportionately represented in the American criminal justice system. African Americans account for only 12% of the U.S. population, yet they fill the

nation's prisons and jails. There is not much difference between the usage of drugs by African Americans and Whites, yet African Americans are convicted and incarcerated at much higher rates for drug offenses. How can this be? Is it that drug policy is aimed at African Americans? Those who support current crime and drug policies may have the answer. The next chapter will provide possible explanations for the disproportionate incarceration of African American offenders and supporting arguments for current crime and drug control policies.

IV.

Mandatory Minimum Drug Sentences: Weapon in the War on Drugs

Since the enactment of Federal mandatory minimum drug sentences in 1986, they have been a topic of debate. Supporters of mandatory minimums argue that tougher laws are helpful in the fight against crime and drugs. This chapter will examine supporting arguments for Federal mandatory minimum drug sentences from several sources. The first argument comes from the former director of the Drug Enforcement Agency (DEA), Asa Hutchinson. The next set of arguments will come from former Governor George Allen of Virginia and John Roth, Chief of the Narcotics and Dangerous Drug Section in the Department of Justice. The final arguments will come from Howard Levine's book *The Drug Problem* in which he debates issues surrounding the problem.

Asa Hutchinson's Arguments Supporting the War on Drugs

Asa Hutchinson served as the administrator of the DEA during the first term of President George W. Bush. On June 28, 2002, he gave a speech at the Modernizing Criminal Justice Conference in London, England in which he provides supporting arguments for the war on drugs. In his speech, Hutchinson states that arguments for drug policy change are based on four myths, and goes on to dispute them. This section will only cover two of the myths, because they are the two that are relevant to this study.

The first myth is that America's drug policy is a failure. According to Hutchinson, this is not true. He states that drug use in the United States has gone down 50% since the late 1970s, meaning 9.3 million people less are using illegal drugs. He also states that cocaine use is down by 75%, and that the crack epidemic has decreased in scope. Hutchinson goes on to compare illegal drug use with the use of alcohol and tobacco. He states that there are only 12.5

million regular users of

illegal drugs compared to 55

million tobacco users and

100 million alcohol users.

Hutchinson does not say

where he got his

information from, but

according to the National

Household Survey on Drug

Abuse, reports of drug use

among respondents 26 and

older increased, while it

decreased among

respondents between the age

of 12 and 25. The survey

showed that the percentage

of persons reporting ever

using illicit drugs rose from

31.3% in 1979 to 41.7% in

2001. That includes all age

groups added together. For

TABLE 4.1

Trends in the percentage of persons reporting any illicit drug use: 1979 to 2001

Age of respondent and recency of drug use	1979	1985	1988	1990	1993	1996	1998	1999	2000	2001
12-17										
Ever	31.8%	27.4%	22.8%	20.9%	16.4%	22.1%	21.3%	27.6%	26.9%	28.4%
Past Year	24.3									
20.7	14.9	14.1	11.9	16.7	16.4	19.8	18.6	20.8		
Past 30 days	16.3	13.2	8.1	7.1	5.7	9.0	9.9	9.8	9.7	10.8
18-25										
Ever	69.0%	62.9%	58.1%	54.9%	50.2%	48.0%	48.1%	52.6%	51.2%	55.6%
Past year	45.5	37.4	29.1	26.1	24.2	26.8	27.4	29.1	27.9	31.9
Past 30 days	38.0	25.3	17.9	15.0	13.6	15.6	16.1	16.4	15.9	18.8
26-34										
Ever	49.0%	59.5%	61.2%	59.8%	58.2%	53.1%	50.6%	53.2%	50.9%	53.3%
Past year	23.0	26.2	19.1	18.4	14.6	14.6	12.7	13.5	13.4	16.1
Past 30 days	20.8	23.1	14.7	10.9	9.5	8.4	7.0	6.8	7.8	8.8
35 and older										
Ever	11.8%	18.1%	20.0%	22.5%	26.1%	29.0%	31.8%	35.7%	35.5%	38.4%
Past year	3.9	5.5	5.1	5.2	5.5	5.3	5.5	5.9	5.5	6.3
Past 30 days	2.8	3.9	2.3	3.1	3.0	2.9	3.3	3.4	3.3	3.5
All (ages 12 and other)										
Ever	31.3%	34.4%	34.0%	34.2%	34.2%	34.8%	35.8%	39.7%	38.9%	41.7%
Past year	17.5	16.3	12.4	11.7	10.3	10.8	10.6	11.5	11.0	12.6
Past 30 days	14.1	12.1	7.7	6.7	5.9	6.1	6.2	6.3	7.1	

Note: Any illicit drug use includes use of marijuana, cocaine, hallucinogens, inhalants, heroin, or nonmedical use of sedatives, tranquilizers, stimulants, or analgesics. Prior to 1979, data were not totaled for overall drug use and instead were published by specific drug type only.

Data Break: Changes made to the design and execution of NHSDA in 1999 make the 1999, 2000, and 2001 data incomparable to previous years. However, the 1999, 2000, and 2001 data are comparable to each other.

Source: National Household Survey on Drug Abuse.

cocaine the survey did show a decrease in reported use from all age groups except respondents 35 and older. It should be noted that this survey includes persons 12 years and older living in households (Office of National Drug Control Policy, 2002).

Hutchinson also speaks of the impact drug policy has had on crime in general. He cites a 2001 study by the British Home Office, which, found that violent crime and property crime in the late 1990s had increased in every wealthy country except the United States. Hutchinson then states that, "The goal of the DEA is to increase the risk to drug traffickers and decrease drug availability." He offers more evidence of drug war success by pointing out that after law enforcement presence at the U.S.-Mexico border was increased drug seizures also increased. The amount of cocaine seized doubled and seizures of methamphetamine and heroin at a Texas port went up by 425% and 172% respectively.

The second myth is that U.S. prisons are filled with drug users. According to Hutchinson only 5% of people in Federal prison for drug offenses are there for possession. He does admit that the percentage is higher for state prisons, 27%. He believes that of those in prison on possession charges the majority of those are traffickers who took a plea bargain down to possession. Hutchinson also mentions the Rockefeller drug laws as proof. New York has received much criticism for these tough laws. According to the statistics given, 97% of prisoners with drug offenses were charged with sale or intent to sell. He also says that first time drug offenders do not usually go to prison. He then speaks of the fact that the criminal justice system refers more people to drug treatment than any other source. This is to show that the criminal justice system seeks to punish those that deserve it, and to help those that need it (Hutchinson, 2002).

Hearing before the Subcommittee on Criminal Justice, Drug policy, and Human Resources

On May 11, 2000, a hearing before the House of Representatives committee on government reform subcommittee on criminal justice, drug policy, and human resources was held to discuss the effectiveness of mandatory minimum drug sentences. The hearing consisted of the testimony of government agency representatives, organizations, and state leaders that support and oppose the use of Federal mandatory minimum drug sentences.

Testimony of Governor George Allen

The first person to testify before the committee was the former governor of Virginia, George Allen. He testified in support of mandatory minimums, and stated they should be increased. In his opinion “drugs breed violence,” so keeping drug offenders off the street would lead to a decrease in crime. Allen also stated that drug use is on the rise among middle school, high school, and college students. By looking at the results of the National Household survey on drug abuse this is not evident. Those results showed that 31.8 % of respondents between the ages of 12-17 reported ever using illicit drugs in 1979. By 2001, the percentage was down to 28.4%. For respondents between the ages 18 and 25 the percentage decreased from 69% in 1979 to 55.6% in 2001 (Office of National Drug Control Policy, 2002). Results from the Monitoring the Future Study conducted by the Institute for Social Research at the University of Michigan contradicted his claim. The hearing was held in May of 2000. The survey for the previous year showed that drug use trends were mixed. It actually showed that use was down from recent peak levels of the mid 1990s and for the year 1999, there was little change (Johnston, O'Malley, & Bachman, 1999).

Allen went on to speak about the changes that were made in Virginia while he was governor and how they led to a decrease in crime. During his term parole was abolished and offenders were forced to serve longer sentences. Larger numbers of offenders serving longer sentences made them unable to commit crimes because they were off the streets. This he said helped lower Virginia's crime rate. Allen also proposed project drug exile, which would put more law enforcement in the street. This would lead to more arrests, prosecutions, and offenders

receiving mandatory minimums, thus taking more offenders off the street for longer periods of time and decreasing crime rates.

Governor Allen also addressed concerns about the sentencing disparities for crack and powder cocaine. Instead of decreasing penalties for crack cocaine, he called for an increase in penalties for powder cocaine, ecstasy, and methamphetamines. Allen also said that mandatory minimums for people who sell to minors should be doubled, and for those who illegally possess drugs and firearms the minimum should be increased to 7 years. The point that Allen continued to make was that of incapacitation. Keeping offenders in prison and out of the community decreased crime and made the community a safer place.

After Allen finished giving his statements, he was asked several questions. One of the questions he was asked was what impact the abolishment of parole had on the state's prison population? Allen answered that when he first came into office many of the state's felons were being housed in local jails, so the state's prison system had to be expanded anyway. It didn't matter that the changes would lead to overcrowding, because the state already had a need for more prisons. He offered proper classification as a way of making the housing of offenders more cost effective and dealing with prison overcrowding.

Another concern brought up was the sentencing disparities based on race. Governor Allen admitted that before parole was abolished African Americans did receive harsher sentences than Whites did. He based this on the fact that Virginia had the jury system and different juries came up with different sentences. He said that since the abolishment of parole and the establishment of sentencing guidelines disparities have been reduced. This is because judges now do the sentencing and they have to sentence within the guidelines. Allen went even further and said that there is no racial disparity for African Americans, Whites, or any other race. He

then discussed how he believes the African American community has benefited from the efforts of the state to reduce crime. The next section contains Governor Allen's comments on this issue.

And while there is a disproportionate, compared to the population of percentages in the State of Virginia of African Americans in prison, which I think is the same in the Federal system, as well, what we have found in Virginia was that African Americans were disproportionately victims of crime. I will always recall folks who said they could not sit on their front porch until we had abolished parole and people were getting put into prison for committing those crimes and no longer running roughshod in the neighborhood, and also sending a message to folks that you are not just going to get--it is not going to be a catch and release system. So African Americans, as all citizens, are benefiting from the lower crime rates in that African Americans just statistically are disproportionately victims of crimes.

In the previous statement, Allen says that racial sentencing disparities were eliminated, yet in the above passage, he says that the population percentage of African Americans in Virginia is disproportionate to the population percentage in prison. He tried to avoid discussing the population disproportion by speaking of the fact that under the sentencing guidelines all offenders committing certain crimes receive the same sentences no matter the race. That may be true, but why is the incarceration rate of African Americans still disproportionate? Allen also brings up the fact that African Americans are disproportionately victims of crime. According to him, African Americans benefit from incarcerating more offenders for longer periods of time. This raised the question of whether the governor believed African Americans were more likely to commit crime than people of other races. Congressman Elijah Cummings of Maryland asked

him this question several times. Each time he said he believed that no race was more likely than any other to commit a crime. Then he went back to the statement about African Americans being victims. He never gave a true answer to this question.

Cummings then brought up concerns about Virginia's project gun exile. This was the plan that formed the basis for Allen's proposal of project drug exile. Cummings stated that in *Jones v. United States* the Fourth Circuit Court of Appeals found that project exile was disproportionately enforced in Black communities. Ninety percent of exile defendants were Black even though they accounted for only ten percent of the state's population. Allen countered this by saying that the statistics were slightly wrong, but he gave no evidence to back this up.

Testimony of John Roth, Chief of Narcotics and Dangerous Drugs

The next person to testify in support of mandatory minimum drug sentences was John Roth, Chief of the Narcotics and Dangerous Drug Section in the Department of Justice. Speaking on behalf of the Department of Justice, he said, "We believe that the existing sentencing scheme for serious Federal drug offenses provides prosecutors with a valuable weapon in the fight against major drug traffickers. At the same time, the current mandatory minimum laws strike the right balance between allowing nonviolent offenders to escape the mandatory minimum sentences in appropriate circumstances." According to him, mandatory minimums are for serious drug offenders, violent offenders, and repeat offenders, and they assist in the prosecution of drug offenses in several ways.

Mr. Roth's first point was that mandatory minimums bring uniformity and predictability into the sentencing of certain crimes. He also pointed out that they increase public safety by incapacitating dangerous offenders. Next, he discussed how mandatory minimums aid in the prosecution of serious drug offenders because of the substantial assistance departure. If

the offender can provide information that can help in the investigation and prosecution of offenders higher in the chain of supply, he or she can be provided relief from mandatory minimums. This type of information is preferred because it comes from within the organization.

Roth then went on to discuss the safety valve provisions that were added in 1994. This provided offenders without a criminal history, who did not possess a firearm or use violence, and who was not a leader, manager, or organizer an opportunity to receive a sentence below the mandatory minimum. This is in exchange for all the information the offender can provide for the case, even if the information is not useful. According to Roth, the safety valve has been successful. He cited information from the United States Sentencing Commission (USSC) saying that in 1998, of the 12,055 drug defendants eligible to receive mandatory minimums, 4,185 of them received relief. Roth then went on to say that drug sentences on average have decreased from 89 months in 1992, to 78 months in 1998.

Roth's final point dealt with the discretionary power of the prosecutor. He said that there is no discretion. Safety valve provisions are mandatory. If the circumstances of the case are within the safety valve provisions, the defendant must receive a sentence reduction. He then points out that even if a prosecutor files a substantial assistance motion the court has complete discretion. The prosecutor can provide a sentence recommendation, but the court is not obligated to use that sentence.

Testimony of John Steer of the United States Sentencing Commission

John Steer of the United States Sentencing Commission testified that for the most part the safety valve provisions had been doing what they were set out to do. He stated, "The safety valve is applying to about 25 percent of the total number of defendants' sentences for drug trafficking, including the reduction that is available under the drug guidelines for those who are,

because of quantity or other factors, above the mandatory minimum.” According to the Bureau of Justice Statistics, 44% of defendants convicted in U.S. District Court received a sentence outside of the applicable sentencing guideline range. 99.6% of those receiving sentences out of the guideline range received a downward departure (Scalia, 2001).

One of the results of the safety valve is that defendants are spending less time behind bars. Steer testified that the USSC found that between the years of 1992 and 1998 there was a decrease of about 12% in the average sentence length. This still does not change the fact that on average African Americans receive longer sentences than any other race. According to Steer 30% of those subject to five year mandatory minimums in 1999 were African American compared to 25% of Whites. African Americans made up 43% of those subject to ten-year mandatory minimums compared to 20% of Whites, and of those subject to 20-year sentences African Americans accounted for 60% compared to only 17% for Whites. In the mandatory life range, African Americans accounted for 80% compared to the 13 % made up by Whites.

Drug Policy Is Not Racially Discriminatory

The final supporting arguments for current drug policies come from *The Drug Problem*, written by Herbert Levine. Levine makes several points to counter arguments that drug policy discriminates against racial minorities. According to him, statistics showing high arrest and incarceration rates are misleading because they do not take into account the reasons for them. The first reason is that African American communities are filled with drugs. Like Governor Allen, Levine too brings up the fact that African Americans are more likely to be victims of crime. According to him African Americans benefit the most from drug policy, because they are the most adversely affected group. African American communities complain about drugs, gangs, and violence, so the police focus on making arrests in these communities. If people in White

communities were making the same complaints, law enforcement would be doing the same thing in their neighborhoods. Levine also adds that African Americans are more likely to get caught dealing drugs because they deal in the open where as Whites deal in their offices and homes.

His next point deals with the high penalties for crack cocaine, and why they are acceptable. According to Levine these penalties are justified because of the more dangerous consequences associated with it. He says that those that deal in crack are more likely to use violence because they have more extensive criminal backgrounds. He also mentions the seriousness of health consequences brought about by crack use. Levine then goes on to discuss the fact that 11 of the 20 members of the Congressional Black Caucus supported the 1986 Anti-Drug Abuse Act, which enhanced the penalties for crack cocaine. According to Levine if the penalties were too harsh there would have been less support for the act and more opposition by the Black Caucus. He says that members of the Black Caucus realize by severely punishing Black crack users non-crack using African Americans will greatly benefit.

Levine also says that African Americans get arrested more for crack crimes because they commit the majority of crack offenses. To prove that the number of people affected by crack sentencing is exaggerated Levine uses the words of Craig Horowitz in *New York* magazine. "There were only 3,400 people convicted under the Federal crack guidelines in 1994, and the overwhelming majority of them were hardened criminals or serious offenders. Only 51 were convicted after being arrested with only a small amount of crack, previous record, and no weapon." By taking these people off of inner city streets law-abiding minorities are made safer.

The final reason given is that the government is not to blame for the racial disparities in the justice system caused by Federal drug policy. Many supporters of drug policy change assert that the government is intentionally targeting African Americans. Levine points out that African

Americans have made many advances in this country in education, civil rights, and finances with the help of the government. Because of these things the government cannot possibly be to blame. He also points out that claims that drugs were introduced into the Black community by powerful Whites lacks credibility. All types of Americans use and distribute drugs, race, economic status, and location does not matter.

Summary

In this chapter, many arguments have been made supporting current drug policy. Supporting arguments range from claims that American drug policy is successful, and crime and drug use have declined, to drug policy does not discriminate against minorities. It may be true that the Federal government is not purposely targeting African Americans with its drug policies, but it is hard to deny the fact that African Americans are paying a huge price for the drug war. There are claims that African American communities are safer because of higher incarceration rates. Is this really the case? If so many high level drug dealers are being incarcerated how are drugs still finding their way into African American neighborhoods? Depending on what aspect a person is looking from the war on drugs may be considered a success, but from the aspect of an African American is it worth it?

V.

Mandatory Minimum Drug Sentences: Weapon in the War on Blacks

This chapter will begin with a discussion of how cocaine and crack were introduced to African Americans in this country. The next section will cover some of the indirect consequences to African American families and their community as a result of higher incarceration rates brought about by Federal drug sentences. This will be followed by case profiles that highlight how unfair and rigid mandatory minimum sentencing guidelines can be. The chapter will end with quotes from members of the U.S. judiciary who oppose mandatory minimums. The purpose of this chapter is to examine the impact mandatory minimums and Federal drug policies have on various facets of African American life.

African Americans and the First Cocaine Epidemic

Cocaine was introduced to Black laborers in the late 1800s. They were employed for loading and unloading steamboats, building roads and levees, laying track, picking cotton and other physically demanding jobs, often carried out in primitive circumstances with no protection from the extremes of weather. To help them cope with the conditions they were given cocaine. From there it is said that cocaine spread to the so called, "Black underworld." In the early 1900s reports began to circulate that Blacks were committing more crimes because of cocaine. A story was published in the *New York Times* alleging, "most of the attacks upon white women of the South are the direct result of the 'cocaine-crazed' Negro brain." The story declared "Negro cocaine fiends are now a known Southern menace (Courtwright, 1995; History of Prohibition)."

In 1910, Dr. Hamilton Wright went before Congress and spoke of the link between Black crime and cocaine. According to him 'cocaine is often the direct incentive to the crime of rape by the negroes of the South and other sections of the country.' At the time that he made his

report Dr. Hamilton was preparing narcotic control legislation. It is possible that he exaggerated the link between cocaine and the rise in Black crime to emphasize the importance of the legislation he was working on. The piece legislation, the Harrison Narcotics Act, was eventually passed in 1914. After the passage of the Harrison Narcotics Act the price of cocaine went up and many casual users either cutback or quit using altogether (Courtwright, 1995).

African Americans and the Crack Epidemic

In 1985, crack cocaine hit the street as the alternative to the more expensive powder cocaine. At the time powder cocaine was being sold for \$150 a gram, while crack could be bought for somewhere between \$5 and \$10. Both crack and cocaine sales began to rise along with the number of users. This led to the movement of crack dealers into low-income neighborhoods. The people in these neighborhoods were not prepared for what this drug would bring. Crack related illnesses and deaths began to increase, crack-addicted parents were abandoning children, and violent crimes were on the rise. Street gangs were fighting for control of the crack trade in neighborhoods, and many crack addicts were turning to crimes such as robbery, prostitution, and selling crack in order to feed their crack habit.

Attempting to make crack infested neighborhoods safer law enforcement began focusing efforts on arresting as many crack users and dealers as possible. This created a disproportionate number of African Americans in jails. African American leaders began to complain that African Americans were being unfairly targeted. Law enforcement argued back that they were arresting more minorities because they were using more than Whites. They cited studies such as the 1997 National Household Survey on Drug Abuse, which found that Blacks were 133 percent more likely to use crack than Whites (Barter, 2002).

In response to the crack epidemic harsher anti-drug legislation was enacted. In 1986, a mandatory minimum sentence of five years was set for possession of five grams of crack. It took possession of five hundred grams of powder cocaine to mandate the same sentence. Intentional or not mandatory minimum drug sentences have contributed to the disproportionate incarceration of African Americans. Unequal treatment and bias in the American criminal justice system is nothing new to African Americans. These laws only exacerbate a problem that has always existed. Although the laws appear to be racially biased, there are people that assert that these laws have been useful in fighting the war on drugs. I in no way condone the possession, use, sale, or distribution of illegal drugs; however, I must ask, are our drug laws fair to all Americans?

The Fourteenth Amendment of the Constitution provides for equal protection under the law, meaning that the laws must be applied equally to all Americans regardless of race, color, or creed. Still the nation's anti-drug laws are unequally affecting African Americans. When will something be done to deal with the inequality? More people are being impacted than just those that are incarcerated. Their families and communities are suffering too. The rest of this chapter will discuss some of the areas in which African American males, females, children, and communities are being impacted by high incarceration rates.

Indirect Consequences of Incarceration to African Americans

Consequences for African American Men

Although African Americans as a whole have been disproportionately affected by current drug policy, African American males have been the most severely impacted group. Of the 2.1 million incarcerated offenders at midyear 2004, 576,600 were African American males between the ages of 20 and 39. In 2001, African American males had a 32.2% chance of going to prison.

This was the highest among all demographic groups. White males only had a 5.9% chance (Drug War Facts, 2005). Some of our public officials continue to stand behind the notion that African American males commit more crimes and are more dangerous than any other group therefore it is only natural that they be incarcerated at higher rates. According to Brian Silverman, former chief of the Cook County, Illinois, Public Defender's office, "If you took all the Black males between the ages of 16 and 25 and put them on an island in the Pacific, crime would drop 80 percent overnight (Susman, 2002)." These are the types of attitudes and beliefs that African American males face in today's society.

One author wrote that, "When African American males become ten to thirteen years of age, they know that the doors of opportunities have closed on most adult males in their community. African American boys know that society has little concern for them unless they can shoot a basketball, run a football, hit a baseball, sing, dance, or do stand-up comedy. Even with or without these talents, hopelessness is widespread (Alexander, 2000)." Because of this hopelessness, many Black males turn to what seems to be an easy way of making money, selling drugs. The drug trade offers an alternative to working long days and nights for minimum wage only to continue to live in poverty. Drug dealers can make just as much and more in a couple of hours than they can during a full days work. They feel forced to do whatever it takes to survive and support their families. Not all people that find themselves in the drug trade are there because of such unfortunate circumstances, but these are the people that I would like to focus on.

Felony convictions can have far-reaching consequences for African American males. For many of these men finding a job after release can be difficult. Some employers are unwilling to take a chance on a convicted felon. If the man is able to land a job it is usually a job in which earning potential is limited. Jobless men or men in low paying jobs may decide that the only

way for them to survive is to return to their former life of crime and drugs. Many of these men do not want to go back there, but they do not know what else to do. After a while, some of them end up right back in prison continuing a cycle of criminal behavior and eventual incarceration.

Not only do job opportunities become limited for incarcerated African American males, but so do educational the opportunities. Many non-criminal Americans believe that prisoners have the opportunity to receive a free college education while incarcerated. However, that is not true. In 1994, Congress abolished all federally financed college education for prison inmates when it voted to eliminate Pell Grants for Federal and state prisons. Today the majority of money allocated toward prison education now goes to vocational programs (Burma, 2005). Once released from prison it is still difficult to receive a college education. The Anti-Drug Abuse Act of 1988 denied Federal benefits, including student loans, to convicted drug offenders. A college education is expensive, and to someone who is already poor and cannot receive assistance it may be unattainable.

Consequences for African American Families

African American men are not the only ones to suffer during their incarceration. Their families also suffer. The woman is sometimes forced to take on both the roles of mother and father, and has to balance her responsibilities as nurturer, caregiver, and sole financial provider. Mothers are forced to work extra hours or take on more jobs to try and make up for the loss of income from the incarcerated man. Some of these women may get caught up in the life of drugs and crime trying to support their family, and may too find themselves in prison. The incarceration rates of African American women are also on the rise. Their chances of going to prison are almost as high as those of White males. Black females have a 5.6% chance of going to prison compared to 5.9% for White males (Drug War Facts, 2005).

The absence of one parent due to incarceration may have negative impacts on children, but the loss of both parents can be devastating. According to the Bureau of Justice Statistics in 2000, 1.5 million minor children in the United States had at least one parent in prison (Families Against Mandatory Minimums, 2002). The incarceration of a parent increases a child's chances of being forced into foster care or shuffled around among family members. Absence of a parent may also result in the child having difficulties in adjusting to a new family composition. The loss of one or both parents could lead to distrust of authority figures, the child may begin to act out at home and in school, and his or her grades may drop. If these signs are ignored and nothing is done to help the child cope with his or her situation he or she may be headed toward delinquent behavior. Once again, the cycle of crime is perpetuated (Clear, 1996).

Consequences for African American Communities

Black communities as a whole also suffer from the incarceration Black men and women. While a Black man or woman is incarcerated, the money that he or she could provide to the local market is relocated to the prison system. Prisoners may be worth a few thousand dollars to their community and family, but he or she makes a greater contribution to the prison industry. Money that could be used to build up the community is now being used to build up the prison system. The Federal Bureau of Prison's budget has increased by more than 1,350%, from \$220 million in 1986 to \$3.19 billion in 1997 (Drug War Facts, 2004). Once prisoners are released, they are likely to be unemployed or underemployed adding to the communities' unemployment rate, and thus driving the communities' economic status down (Clear, 1996).

The African American community also suffers in the area of politics. A number of African American votes are lost because of felony disenfranchisement. Forty-eight states plus the District of Columbia prohibits inmates from voting while incarcerated for a felony offense.

Thirty-five states prohibit felons from voting while they are on parole. Thirty-one of those states also prohibit felony probationers from voting. Five states actually deny the right to vote to all ex-offenders who have completed their sentences. Each state has its own process of restoring voting rights to ex-offenders, but the processes are usually so long and difficult that few ex-offenders take advantage of them.

African American men are disenfranchised at a rate seven times the national average. 1.4 million African American men or 13% of Black men are disenfranchised. In six states one in four Black men are permanently disenfranchised. With rising incarceration rates, it is projected that in the next generation 3 out of 10 Black men can expect to be disenfranchised at some point in their lifetime. In states that disenfranchise ex-offenders, it is estimated that as many as 40% of Black men could permanently lose the right to vote (The Sentencing Project, 2005).

Case Profiles of Individuals Who Received Mandatory Minimum Drug Sentences

Lamont and Lawrence Garrison

Lamont and Lawrence Garrison, Black twins from Northeast Washington D.C., were a month away from graduating from Howard University, when Federal agents arrested them as a part of a multi-million dollar drug conspiracy. The brothers say that Tito Abea was the only person they knew that was involved in the case. Lamont and Lawrence claim that they hired Abea to work on their uncle's car. Abea failed to complete the job that he was hired to do, so the brothers, their mother, and their uncle started calling Abea at all times of day and night trying to get him to fix it. Tito Abea was actually a major player in a 20 person powder and crack cocaine operation. To receive a sentence reduction he implicated others in the crime including the Garrison twins.

There was no evidence that Lamont and Lawrence were involved in the conspiracy. No drugs, paraphernalia, or any other evidence was found on them or in their home. There were only the testimonies of others involved in the conspiracy. There wasn't even evidence that the two had benefited financially from dealing drugs. At the time, they were living at home with their mother and had thousands of dollars in college loans. Lamont alone owed \$40,000.

Believing they would be found innocent, the Garrison's went to trial, with court appointed attorneys. Although they had no priors and there was little evidence against them both were found guilty of powder cocaine and crack cocaine conspiracy. Lawrence was sentenced to 15 years in Federal prison, while Lamont was sentenced to 19 years. He received four more years than his brother because he testified that they were innocent, therefore failing to accept responsibility for the crime. Abear, the leader of the conspiracy, only received 3 years (From Real Life, 2000).

These two young men were doing what many young Black men their age were not getting the opportunity to do, going to college. Lamont and Lawrence were on their way to graduating and were planning on becoming lawyers. Their lives were permanently altered based on the words of convicted drug offenders and nothing else. Had the two been able to hire adequate defense attorneys they may have been able to prove their innocence, but they were not able to. Now the Garrison's will spend a large portion of their adult life in prison. Some offenders deserve long, harsh sentences, but there are many cases just like these in which, Black men are unfairly subjected to mandatory minimum drug sentences.

Tammi Bloom

Tammi Bloom had been married to her husband Ronald for 15 years. They shared two children and a home in Miami, Florida. Ronald also had an apartment in Ocala, Florida, which

he shared with his mistress. From there he distributed cocaine. Tammi was implicated in her husband's cocaine dealings when a confidential informant said Tammi was present at a cocaine sale her husband had made from their home. The informant claimed that Tammi's job was to count Ronald's drug money. The day that Ronald and his mistress were arrested in Ocala the police also searched the Miami home. They found cocaine, cocaine base, 3 firearms, and drug ledgers. Tammi claims that she only knew of a small bag of cocaine in her husband's nightstand. According to her, the drugs were well hidden. She was held responsible for the drugs found in the house and for those sold by her husband. Tammi had no prior convictions yet she was convicted of cocaine and cocaine base conspiracy. She received the longest sentence of those convicted in the conspiracy, 19 years and 7 months. Ronald received 17 years and 6 months. His mistress received 6.5 years (Families Against Mandatory Minimums, 2001).

Here is a case in which two children will grow up with both their mother and father incarcerated. Only time will tell what affect the loss of their mother and father to the prison system will have on them. The facts of this case do not adequately justify such a harsh sentence for Mrs. Bloom. It is disturbing to think, that a person can go to prison just for being associated with someone who is a drug dealer. It even seems that he or she can be punished for not being more involved in the crime. In both the Garrison and Bloom cases the leaders of the conspiracies received shorter sentences than others that may or may not have been involved. This is not how the guidelines are supposed to work. These are only a couple examples of African American men and women who have been subject to mandatory minimums. They were not violent criminals, leaders in the conspiracies, and they did not have prior criminal records. Despite these facts, they received sentences, which could be viewed as too harsh considering the circumstances of the cases.

Judicial Opposition to Mandatory Minimum Drug Sentences

Some members of the United States judiciary are also opposed to mandatory minimums and are not happy that they are forced to use them. "When the law provides a result that is repugnant, we must still follow the law. And you can only do that so many times before you start to wonder, 'How many more times am I going to put my name on this sentence that I don't believe in?'" These are the words of a former Federal judge, Robert Cindrich. In 2004, he resigned from the Federal bench partially in protest of Federal sentencing guidelines (Families Against Mandatory Minimums, 2004).

There is even opposition from some Supreme Court justices. At the 2003, annual meeting of the American Bar Association, U.S. Supreme Court justice Anthony Kennedy was quoted as saying, "I can accept neither the necessity nor the wisdom of Federal mandatory minimum sentences. In too many cases mandatory minimum sentences are unwise and unjust. . .The legislative branch has the obligation to determine whether a policy is wise. It is a grave mistake to retain a policy just because a court finds it constitutional. Courts may conclude the legislature is permitted to choose long sentences, but that does not mean long sentences are wise or just...A court decision does not excuse the political branches or the public from the responsibility for unjust laws (Families Against Mandatory Minimums, 2004)."

Summary

This chapter started with the introduction of cocaine to African Americans in this country in the late 1800s. Then it covered the crack epidemic, which started around 1985. Next, there was a discussion of some of the indirect consequences of the high incarceration rates brought about by mandatory minimums, and other American drug policies. After that was a profile of a couple of cases in which African Americans were unfairly subjected to mandatory minimum

drug sentences. This is followed by quotes from a Federal judge and a Supreme Court judge opposing mandatory minimums. This chapter has shown that mandatory minimum drug sentences may be useful to some and harmful to others. The purpose of this study is not to say that drug offenders should not be punished, but that the punishment should not be so harsh that it does not fit the crime. The next chapter will summarize the previous chapters, and it will recommend ways in which the Government can change current drug policy so that racial inequality in the criminal justice system can be decreased.

VI.

Conclusion

Since the early 1900s, the United States government has been attempting to control drugs through the use of laws. Racial prejudice and fear of other cultures has often provided impetus in getting these laws passed. This can be traced back to the San Francisco law banning opium smoking, which was directed at Chinese immigrants. Then in 1914, Dr. Hamilton Wright and others exploited prejudices and fears of White Americans against Black Americans and were able to get the first piece of Federal anti-drug legislation, the Harrison Narcotics Act, passed. Government control of drugs was greatly expanded throughout the following years with the passage of: the Boggs Act, the Comprehensive Drug Abuse Prevention Act of 1970, the 1984 Sentencing Reform Act, the Anti-Drug Abuse Acts of 1986 and 1988, the Crime Control Act of 1990, and the Violent Crime Control and Law Enforcement Act of 1994. The laws have gone from regulating who could distribute drugs to controlling the possession, use, sale, and manufacture of certain drugs.

The passage of anti-drug laws of the 1980s was accompanied by a sharp increase in incarceration rates. This increase in overall incarceration rates have led to an even larger disproportion of African Americans involved in the criminal justice system. They are a minority in the U.S. population, but a majority in the U.S. prison population. Drug use among African Americans is not significantly higher than that of Whites, yet they are convicted and incarcerated at higher rates than Whites. Statistics from different agencies can be misleading and conflicting, because each agency has its own methods and purpose for collecting data. Although some of the data collected did not show obvious signs of discrimination against Blacks, most of the

information provided proves that African Americans are not treated equally in the criminal justice system.

Some American leaders are under the impression that tough drug laws and harsh penalties are the key in fighting the war on drugs. According to them, the war on drugs is successful because of decreased crime rates brought about by higher incarceration rates. Mandatory minimum drug sentences have provided a way of keeping criminals off the streets, thus decreasing crime rates. These leaders do not see the discrimination of drug policies and mandatory minimums. These leaders find ways to justify racial sentencing disparities and disproportionate incarceration rates of African Americans. Because African Americans are the majority of those involved in crack cocaine there is nothing wrong with them being incarcerated at higher rates. In fact, they argue that law abiding African Americans benefit greatly from higher incarceration rates of other African Americans because this takes dangerous criminals out of Black communities.

Despite the claims that African Americans benefit from the high incarceration rates of their own they are impacted by unintended consequences. African American males are the most adversely affected group. Black males are more likely to be incarcerated than any other group of Americans. This not only affects their freedom, but the educational and economic opportunities of Black males are often diminished as a result of incarceration. Many of them also lose their voice in how this country is run through disenfranchisement laws. Black families also suffer because they are sometimes torn apart. Sons and daughters are forced to grow up without the love and guidance of fathers, mothers, and in some cases both parents. Some of these children begin to exhibit signs of delinquency and sometimes end up perpetuating the cycle of crime in the Black community. The Black community as a whole also suffers from the loss of money that

could be used to build and restore, but is instead transferred to the building up of the prison industry.

While there is no proof that Federal mandatory minimum drug sentences and other American drug policies are purposely directed at incarcerating African Americans there is proof that they unfairly impact them. There is so much talk of how crime rates have decreased, but that is exactly what it is talk. If higher incarceration rates were accompanied by decreasing crime rates, less drug use and abuse, and safer neighborhoods there might not be so many people condemning them. Many Black neighborhoods are still filled with drugs and crime. The police often choose to forgo entering into these neighborhoods, because they fear their safety. Drug laws and incarceration are not saving these communities. Drugs continue to flow in and out and crime and violence still run rampant. Current drug policy may be working for some, but not for African Americans.

What is even more disturbing is that the Black community as a whole is not aware of what is going on or if they are they are not coming together to make a change. If African Americans banded together as they did in the fight for civil rights they may be able to provide the pressure needed to make changes. African Americans cannot expect White Americans to look out for their welfare and interests. They must arm themselves with the knowledge of what is going on and how to fix it. This study set out to provide information about the direct and indirect costs of mandatory minimum drug sentences to the African American community. It was not found that the Federal government intentionally targeted African Americans with drug policy. However, unintentionally these laws do discriminate against Blacks and something must be done. African Americans have the right to equal protection under the law and they are responsible for standing up for that right. The final section of this chapter gives

recommendations for dealing with racial disparities in the criminal justice system caused by Federal drug policies.

Recommendations for Changing American Drug Policy

Increasing Money Spent on Treatment and Decreasing Money Spent on Incarceration

The money spent on incarcerating offenders may be better spent on rehabilitation and drug treatment. Without being provided the proper resources it may be difficult for offenders to change their criminal behavior. It is also unlikely that a drug addict will beat his or her addiction simply by sitting in a prison cell. By helping an offender reform his or her behavior, it may be possible to prevent him or her from returning to a life of crime. He or she can be given the tools to cope with life's circumstances and to find ways to avoid the pressures and temptations to use drugs. A 1994, RAND report found treatment to be 7 times more cost effective than arresting and imprisoning drug users and sellers (Rydell, & Everingham, 1994). Instead of boasting about the increasing number of incarcerated offenders government officials should be boasting about the number of offenders they have helped avoid returning to drugs and crime. More money should be spent on rehabilitation and drug treatment programs and less on incarcerating non-violent offenders.

Recommendations of the United States Sentencing Commission

The United States Sentencing Commission has provided other recommendations to reform current drug policy. On several occasions the Commission has recommended that Congress adjust mandatory minimum drug sentences and sentencing guidelines. In a 2002 report to Congress, the Commission found that current drug policy exaggerates the relative harmfulness of crack cocaine, the penalties are too broad and are often applied to lower level dealers, and severity of current penalties mostly impact minorities. In the report, the Commission

recommended that the five-year mandatory minimum threshold for crack cocaine be raised from 5 grams to 25 grams. They also recommended that sentencing enhancements be added to the primary drug trafficking guideline specifically targeting more severe punishment of offenders who cause serious harm and have a higher level of responsibility in the crime. The Commission also recommended that the proposed sentencing enhancements apply across all drug types and not just to crack cocaine offenses. Other recommendations included repealing the mandatory minimum sentence for possession of crack cocaine and statutorily defining cocaine base (United States Sentencing Commission, 2002). Congress has not yet adopted these recommendations, but if citizens provide enough pressure to their state's senators and representatives they may consider revising current drug policy.

Organizations that Support Drug Policy Reform

Many organizations and groups support and are working for Federal drug policy reform. One of these groups is Families Against Mandatory Minimums (FAMM). FAMM is a non-profit organization made up of prisoners and their families, attorneys, judges, criminal justice experts, and concerned citizens. Their goal is not to abolish penalties for drug crimes, but to have the punishment fit the crimes. FAMM supports judicial discretion in determining an individual's involvement in a crime, the seriousness of the offense, and the potential for rehabilitation. The organization is seeking a change in mandatory sentencing laws by educating the public and lobbying lawmakers (Families Against Mandatory Minimums, 2002).

Other groups that support drug policy reform are the American Civil Liberties Union, the Leadership Conference on Civil Rights, the Links, Inc., and the National Association for the Advancement for Colored People. These are only a few groups that African Americans can join to work and show their support for policy reform. When African Americans show more interest

in the issues concerning drug policy, policy makers will also have to show more interest. The future of many Black men and women is jeopardized the longer drug policy continues to discriminate against them. By becoming informed, concerned, and taking action, African Americans can pressure lawmakers for drug policy reform. Below is contact information for each of the organizations mentioned above. Becoming involved is just one way that African Americans can make a difference in drug policy reform.

Families Against Mandatory Minimums:

1612 N.W. K St., Suite 700,
Washington, D.C. 20006
Tel: (202) 822-6700
Fax: (202) 822-6704
Website: <http://www.famm.org>

American Civil Liberties Union:

125 Broad Street, 18th Floor
New York, NY 10004
Website: <http://www.aclu.org>

The Leadership Conference on Civil Rights:

1629 N.W. K St., 10th Floor
Washington, D.C. 20006
Website: <http://www.civilrights.org/>

The Links, Inc.:

1200 Massachusetts Avenue, NW
Washington, DC 20005
Tel: 1-800-574-3720
Website: <http://www.linksinc.org>

National Association for the Advancement of Colored People:

4805 Mt. Hope Drive
Baltimore, Maryland 21215
Toll Free: (877) NAACP-98
Website: <http://www.naacp.org/>

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